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6 **UNITED STATES DISTRICT COURT**  
**FOR THE**  
7 **DISTRICT OF NEW JERSEY**

8 SHARON HAWKINS, )  
9 Plaintiff )  
v. ) **Case No.:**  
10 CAVALRY PORTFOLIO SERVICES, LLC, ) **COMPLAINT AND DEMAND FOR**  
11 Defendant ) **JURY TRIAL**  
12 ) **(Unlawful Debt Collection Practices)**

13  
14 **COMPLAINT**

15 SHARON HAWKINS (“Plaintiff”), by her attorneys, KIMMEL & SILVERMAN, P.C.,  
16 alleges the following against CAVALRY PORTFOLIO SERVICES, LLC (“Defendant”):

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18 **INTRODUCTION**

19 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15  
20 U.S.C. § 1692 *et seq.* (“FDCPA”).

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22 **JURISDICTION AND VENUE**

23 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
24 that such actions may be brought and heard before “any appropriate United States district court  
25

1 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original  
2 jurisdiction of all civil actions arising under the laws of the United States.

3 3. Defendant conducts business and in the State of New Jersey and therefore,  
4 personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

6 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.  
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8  
9 **PARTIES**

10 6. Plaintiff is a natural person residing in Cherry Hill, New Jersey, 08002.

11 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

12 8. Defendant is a national debt collection company with corporate headquarters  
13 located at 7 Skyline Drive, Hawthorne, New York 10532.

14 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
15 and repeatedly contacted Plaintiff in an attempt to collect a debt.

16 10. Defendant acted through its agents, employees, officers, members, directors,  
17 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.  
18

19 **PRELIMINARY STATEMENT**

20 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,  
21 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
22 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
23 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
24 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
25

1 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and  
2 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
3 unconscionable conduct, both generally and in a specific list of disapproved practices.

4       12. In particular, the FDCPA broadly enumerates several practices considered  
5 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
6 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
7 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
8 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
9 collector may not use any false, deceptive, or misleading representation or means in connection  
10 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
11 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
12 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
13 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
14 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
15 connection with the collection of a debt.

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17       13. In enacting the FDCPA, the United States Congress found that “[t]here is  
18 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
19 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
20 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
21 additionally found existing laws and procedures for redressing debt collection injuries to be  
22 inadequate to protect consumers. 15 U.S.C. § 1692b.

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24       14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
25 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection

1 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
2 collection practices are not competitively disadvantaged, and to promote consistent State action  
3 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.  
4

### 5 **FACTUAL ALLEGATIONS**

6 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
7 debt from Plaintiff.  
8

9 16. The alleged debt at issue arose out of transactions, which were primarily for  
10 personal, family, or household purposes.

11 17. Within the one year period preceding the filing of this Complaint and January  
12 2011, Defendant, its agents, employees, and servants, made repeated and continuous calls to  
13 Plaintiff’s home telephone in an attempt to collect an alleged debt.

14 18. Defendant placed repeated calls to Plaintiff’s cellular phone almost every day,  
15 causing Plaintiff to receive, at times, more than two (2) collection calls a day and at times, more  
16 than four (4) collection calls a day.

17 19. Defendant placed repeated calls to Plaintiff’s cellular phone almost every day,  
18 causing Plaintiff to receive, at times, more than ten (10) collection calls a week and at times,  
19 more than twenty (20) collection calls a month.  
20

21 20. On January 6, 2011, Defendant called Plaintiff’s place of employment and spoke  
22 with Plaintiff’s co-worker.

23 21. Defendant informed Plaintiff’s co-worker that it was calling from a debt  
24 collection agency and it was important that Plaintiff call Defendant back.

25 22. Defendant again contacted Plaintiff at her place of employment and left a

1 message stating: “if you are Sharon Hawkins do not hang-up you are acknowledging this call.”

2 23. Every time Plaintiff has spoken with a representative of Defendant, she has  
3 requested Defendant send her something in writing with details the debt.

4 24. Defendant has not provided Plaintiff with any written information concerning the  
5 alleged debt.

6 25. Upon information and belief, Defendant has never sent Plaintiff any written  
7 correspondence.

8 26. Within five (5) days after the initial communication with Plaintiff back in January  
9 2011, Defendant failed to send written correspondence to Plaintiff notifying her of her rights and  
10 privileges under the law, specifically the right to dispute and/or request verification of the  
11 alleged debt.

12 27. Defendant’s actions in attempting to collect the alleged debt were harassing,  
13 threatening, abusive, and deceptive.

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16 **CONSTRUCTION OF APPLICABLE LAW**

17 28. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
18 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer  
19 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.  
20 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
21 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status  
22 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

23 29. The FDCPA is a remedial statute, and therefore must be construed liberally in  
24 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
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1 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
2 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the  
3 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
4 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
5 2002).

6 30. The FDCPA is to be interpreted in accordance with the “least sophisticated”  
7 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
8 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
9 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for  
10 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
11 and the fact that a false statement may be obviously false to those who are trained and  
12 experienced does not change its character, nor take away its power to deceive others less  
13 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it  
14 ensures protection of all consumers, even naive and trusting, against deceptive collection  
15 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
16 collection notices. Clomon, 988 F. 2d at 1318.

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18  
19 **COUNT I**  
20 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

21 31. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
22 more of the following ways:

- 23 a. Defendant violated of the FDCPA generally;
- 24 b. Defendant violated §1692c(b) of the FDCPA by communicating with a third  
25 party without Plaintiff’s consent or permission from the Court;
- c. Defendant violated §1692d of the FDCPA by

- d. Defendant violated §1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- e. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- f. Defendant violated §1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of a debt;
- g. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- h. Defendant violated § 1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt; and
- i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, SHARON HAWKINS, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. §1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. §1692k(a)(2)(A);

- 1 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
2 costs incurred by Plaintiff pursuant to 15 U.S.C. §1693k(a)(3); and  
3 d. Any other relief deemed appropriate by this Honorable Court.  
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5 **DEMAND FOR JURY TRIAL**

6 PLEASE TAKE NOTICE that Plaintiff, SHARON HAWKINS, demands a jury trial in  
7 this case.  
8

9 **CERTIFICATION PURSUANT TO L.CIV.R.11.2**

10 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not  
11 subject to any other action pending in any court, arbitration or administrative proceeding.  
12

13  
14 RESPECTFULLY SUBMITTED,

15 DATED: 07/29/11

KIMMEL & SILVERMAN, P.C.

16 By: /s/ Amy L. Bennecoff

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